*** THE HON'BLE SRI JUSTICE B.PRAKASH RAO**
AND
*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

–

+ W.A.Nos. 1274 and 1275 OF 2005

W.A.No. 1274 of 2005

% Dated 20-09-2005

Bunga Padmaja.

…. Petitioner

Vs.

$ Miss. P. Lalitha Kumari and four others.

…. Respondents

! Counsel for the Petitioner: Nooty Rammohan Rao

^ Counsel for the Respondents: G.P. for Higher Education

<GIST:

> HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.A.NOS.1274 AND 1275 OF 2005

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the orders passed in W.P. No. 22242 of 2001 and 3300 of 2002 dated 24.06.2005, W.A. Nos. 1274 of 2005 and 1275 of 2005 are filed by the 4th respondent in the writ petition.

W.P. No. 22242 of 2001 and W.P. No. 3300 of 2002 were filed to declare the proceedings dated 10.01.2002 whereby the 3rd respondent college was directed to issue appointment orders to the 4th respondent as arbitrary and illegal.

Both the appellant and the 1st respondent belong to the Scheduled Castes. While the 1st respondent is a Postgraduate in Zoology with 67% marks, B.Ed in Biological Science with 69% marks and has a post-graduate diploma in costal aqua culture with 65% marks, the appellant passed his MSc. in 1st class from the Andhra University in 1991 with 60% marks. He also obtained his M.Phil degree from Andhra University in 1993 (prior to 31st December 1993).

The 3rd respondent college issued notification, dated 04.06.2001, published in "Eenadu" on 08.06.2001 and "Indian Express" on 10.06.2001, inviting applications for clearing backlog vacancies reserved in favour of the Scheduled Castes and the

Scheduled Tribes. Among the posts notified, to be filled up, was the post of lecturer in Zoology. Since the subject matter of dispute in the writ appeals revolves around the qualifications and the scale of pay attached to the post of lecturer in Zoology it is necessary that these clauses in the notification are extracted:

Qualifications:
(1) First or Second Class Master's Degree in the relevant subject with a minimum of 50% marks.
(2) A pass in National Eligibility test (NET) or SLET.
Scale of pay: UGC Scale of pay will be given to those who passed NET/SLET. Others will be paid State Scale of pay.

The Government, in G.O.Ms. No. 214 dated 08.05.2001, made adhoc rules in exercise of its powers under Article 309 of the Constitution of India. The adhoc rule provides that, notwithstanding anything contained in the A.P. State and Subordinate Service Rules and the Special Rules or any other Rules governing the recruitment procedure adopted by various recruitment agencies for various categories of posts by direct recruitment, the method of selection by written examination and Interview (oral tests), for appointment by direct recruitment for filling up of backlog vacancies for Scheduled Castes and Scheduled Tribes in all categories of posts, be relaxed and that selection for such limited recruitment of Scheduled Castes and Scheduled Tribes be made on the basis of the marks obtained in the qualifying examinations waiving the requirement of a written examination and interviews to fill up the backlog vacancies. Thus the entire basis of selection, for appointment to the backlog vacancy in the post of lecturer of Zoology in the 3rd respondent college, was only the marks obtained in the qualifying examination.

The Government had earlier issued G.O.Rt.No. 1599 dated

07.11.1997 wherein, after careful consideration, it had directed that the lecturers, appointed by direct recruitment or by promotion from the category of in-service junior lecturers, who possess 55% marks in their Master's degree and had submitted their Ph.d thesis or had passed in the M.Phil examination by 31.12.1993, be exempted from passing the National Eligibility Test (NET) for getting eligibility of the Revised University Grants Commission 1986 scales of pay. While the appellant, having obtained 60% marks in her Post graduation and an M.Phil degree prior to 31.12.1993, satisfied the requirements prescribed in G.O.Rt. No. 1599 dated 07.11.1997, and as such was exempted from passing the NET examination for getting eligibility for the revised UGC pay scales, the writ petitioner-1st respondent was not.

The Director of Collegiate Education issued proceedings dated 25.09.2001, referring to the earlier orders of the Government in G.O.Rt. No. 1599 dated 07.11.1997, informing that NET/SLET candidates should be considered for selection, that if more than one person with NET/SLET was available then their merit in Post Graduation should be considered for selection, that if no NET/SLET candidates were available for selection, then candidates with the highest marks in Post graduation should be selected. The Director of Collegiate Education further clarified that in view of the government order, in G.O.Rt. No. 1599 dated 07.11.1997, candidates who possessed 55% marks in their Master's degree, relaxable by 5% marks in the case of Scheduled Castes/Scheduled Tribes, and had passed M.Phil examination by 31.12.1993 shall be treated on par with candidates who had passed NET/SLET. A copy of this circular memo dated 25.09.2001 was marked to all the Regional Directors of Collegiate Education in

the State and to all correspondents of aided colleges. While the appellant herein is a post graduate with 60% marks and had obtained his M.Phil degree prior to 31.12.1993, the 1st respondent-writ petitioner had obtained 66.50% marks in her post-graduation. She neither possessed an M.Phil degree nor did she pass the NET/SLET examination.

The writ petitioner relies on G.O.Ms. No. 214 dated 08.05.2001, wherein marks in the qualifying examination is prescribed as the criteria for selection, to claim preference in selection on the ground that she had secured more marks in the Post graduate examination as compared to the appellant herein. The writ petitioner contends that, the direction issued by the Director of collegiate education in the impugned order dated 25.09.2001, was highly unjust, improper and should not be applied to her case, as the said instructions came into force after the 3rd respondent had issued a notification inviting applications for appointment to the posts of lecturers and after the entire selection process, to fill up the post of lecturer in Zoology in the 3rd respondent college, had been completed on 28.08.2001.

The learned single judge, in the order under appeal, took note of the adhoc rule in G.O.Ms. No. 214 dated 08.05.2001 which exempted the requirement of holding a written examination and interview, for filling up of backlog vacancies. The Learned Judge also took note of the fact that the petitioner, who had obtained more marks in post graduation, was called for interview on 28.08.2001 and based on the interview and verification of the records, the 3rd respondent college had issued proceedings dated 01.09.2001 informing her that she was selected as lecturer in

Zoology and that her selection was subject to approval of the Commissioner of collegiate education. The Learned Judge held that G.O.Rt. No. 1599 dated 07.11.1997 was a general circular issued by the Government, in exercise of its executive power, and while it applied both to general candidates and to the reserved category, there was no indication that these instructions were applicable to the limited recruitment held for filling up of backlog vacancies, and that it was only by virtue of the clarifications issued on 25.09.2001 that the Director of Collegiate Education had made G.O.Rt. No. 1599 dated 07.11.1997 applicable to the limited recruitment held for filing up of backlog vacancies. The Learned Judge held that the 1st respondent could not have issued such clarifications which was contrary to the orders in G.O.Rt. No.1599 dated 07.11.1997, and the said G.O. was silent with regards filling up of backlog vacancies. The learned Judge held that, while it was open to the government to issue executive instructions, it could not be done by way of a clarification by the 1st respondent, that the proceedings of the 1st respondent dated 25.09.2001 lacked jurisdiction and was liable to be quashed. The Learned Judge held that, even under the notification issued by the 3rd respondent college dated 04.06.2001, a pass in the National Eligibility Test or State Level Eligibility Test was not a minimum qualification or an additional qualification, that it was only incorporated in the notification for the purpose of giving U.G.C. pay-scales or the State pay-scales to candidates selected and that, even though the 4th respondent had admittedly passed M.Phil examination prior to 1993, and was exempted under G.O.Rt. No. 1599 dated 07.11.1997 from passing NET, it was only for the purpose of giving

UGC scales, since a person who had not passed NET/SLET, but had passed the M.Phil examination before 31.12.1993, was eligible for the benefit of the revised U.G.C. pay-scales. The Learned Judge held that possessing an M.Phil degree was not a minimum requirement for appointment as a lecturer in Zoology but was a minimum requirement for being given UGC pay scales, and that the proceedings issued by the Director of Collegiate Education dated 10.01.2002, on the basis of the letter of the Regional Joint Director dated 15.10.2001, was without application of mind and as such the 4th respondent was not entitled to be appointed as a lecturer. The proceedings dated 10.01.2002 and the clarification dated 25.09.2001 were quashed and a direction was issued to the 1st respondent to approve the appointment of the petitioner as a lecturer in accordance with law.

Sri Nooty Rammohan Rao, learned Counsel for the appellant, would submit that the notification, inviting applications for filling up backlog vacancies in the posts of lecturers in the 3rd respondent college, prescribes two essential qualifications. Firstly, a Master's degree with 1st class or 2nd class with a minimum of 50% marks and the other, a pass in the National eligibility test/State Eligibility Test (NET/SLET), and that only such of those candidates, who satisfied both these qualifications, were eligible to be considered for appointment as a lecturer. According to the Learned Counsel, not one but both the qualifications were required to be satisfied to be eligible for appointment as a lecturer. Learned Counsel would contend that, on a reading of the notification as a whole, the prescription of payment of U.G.C. scales only to those who had passed NET/SLET and payment of

State scales of pay to others, could only mean that if there were no candidates available, who possessed the qualification of a pass in the NET/SLET, then such of the candidates who possessed the other qualification, of a Master's degree with a minimum of 50% marks, would be considered, in which event alone would the question, of payment of State scales of pay, arise. Learned Counsel would submit that the appellant possessed both the prescribed qualifications as the U.G.C. instructions specifically exempted candidates, who had obtained their M.Phil degree prior to 31.12.1993, from passing the National eligibility test. According to the learned Counsel, as there were no other candidates, including the writ-petitioner, who possessed both the prescribed qualifications, the appellant alone should have been considered for selection, and the mere fact that the petitioner had obtained more marks than the appellant in post-graduation was of no consequence. Learned Counsel would submit that the circular instructions of the Director of School education, dated 25.09.2001, merely clarifies the earlier instructions issued in G.O.Rt. No. 1599 dated 07.11.1997 and, since parity between candidates, who had passed their M.Phil examination prior to 31.12.1993 and those who had passed the NET examination, was prescribed in G.O.Rt. No. 1599 dated 07.11.1997, the mere fact that the circular memo dated 25.09.2001 was issued subsequent to the completion of the selection process was of no consequence. Learned Counsel would submit that, in as much as the prescription, in G.O.Rt. No. 1599 dated 07.11.1997, is for appointment to posts by direct recruitment, it cannot be held inapplicable to cases where direct recruitment is resorted to fill up backlog vacancies.

Sri P. Venugopal, learned Counsel for the respondent-writ

petitioner, on the other hand, would submit that the proceedings of the Director of Collegiate Education dated 25.09.2001 can, at best, be prospective in its application and since the selection process had already been completed prior thereto, no reliance could be placed on the said proceedings to disentitle the petitioner from being considered for selection and appointment as a lecturer in Zoology. Learned Counsel would submit that, since it was the Government which had issued the executive instructions in G.O.Rt. No. 1599 dated 07.11.1997, any clarification thereto could only be given by the government and not by the Director of Collegiate education. According to the learned Counsel, the very fact that the notification prescribes two different pay scales, 1) UGC scales of pay to those who had passed NET/SLET and 2) State scales of pay to others, was proof that the requirement of a pass in the NET or SLET was only for entitlement of UGC scales of pay. Learned Counsel would submit that, in accordance with the adhoc rule in G.O.Ms. No. 214 dated 08.05.2001, on a comparison of the marks in the qualifying examination (post graduation), since the writ petitioner had obtained higher marks than the appellant, it was she who was entitled to be selected as a lecturer and not the appellant herein.

Before examining the rival contentions, it is necessary to note certain provisions of the University Grants Commission Act and the regulations made thereunder. As these provisions have been referred to in **University Grants Commission Vs. Sadhana Chaudhary**[1], it is useful to extract the relevant portions of the said judgment:-

"……. The UGC has been established under the University Grants

Commission Act, 1956 (hereinafter referred to as "the Act") which was enacted by Parliament to make provisions for the coordination and determination of standards in universities. One of the functions entrusted to the UGC under the Act is to recommend to any University the measures necessary for the improvement of University education and advise the University upon the action to be taken for the purpose of implementing such recommendation [Section 12(*d*)]. The UGC has been empowered to make regulations consistent with the Act and the rules made thereunder defining the qualifications that should ordinarily be required of any person to be appointed to the teaching staff of the University, having regard to the branch of education in which he is expected to give instruction. [Section 26(1)(*e*)]. In exercise of the powers conferred by Section 26(1)(*e*), the UGC made the University Grants Commission (Qualifications Required of a Person to be Appointed to the Teaching Staff of a University and Institutions Affiliated to it) Regulations, 1982 (hereinafter referred to as "the 1982 Regulations") whereby qualifications were prescribed for appointment to a teaching post in the University or in any of the institutions including constituent or affiliated colleges recognised under clause (*f*) of Section 2 of the Act or in an institution deemed to be a University under Section 3 of the Act. Under the 1982 Regulations the minimum qualifications prescribed for appointment to the post of University lecturers were (*i*) a Doctorate's Degree or Research work of equally high standard; and (*ii*) a good academic record with at least second class (C in the seven-point scale) Master's degree in a relevant subject from an Indian University or an equivalent degree from a foreign university. For college lecturers the minimum qualifications prescribed were (*i*) an M. Phil. degree or a recognised degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work; and (*ii*) good academic record with at least second class (C in the seven-point scale) Master's degree in a relevant subject from an Indian University or an equivalent degree from a foreign university.

In its report dated 23-3-1985, the National Commission on Teachers II, after observing that standards of performance varied from university to university, expressed the view that it must be ensured that every citizen aspiring to be a teacher at the tertiary level, i.e., a lecturer, qualified in terms of a national yardstick. The Commission recommended that the UGC should incorporate the passing of one of the national tests at least in Grade B+ on a seven-point scale in its regulations laying down the minimum qualifications of teachers and that this should come into force within two years. Thereafter, in 1986, the UGC appointed a Committee under the Chairmanship of Prof. R.C. Mehrotra (for short "the Mehrotra Committee") to examine the structure of emoluments and conditions of service of University and college teachers and to make recommendations in this behalf having regard to the necessity of attracting and retaining talented persons in the teaching profession and providing advancement and opportunities to teachers of Universities and

colleges. The Mehrotra Committee was of the view that, in order to ensure quality of new entrants to the teaching profession, all aspirants for the post of lecturer in a University or college should have passed a national qualifying examination since such a test would have the merit of removing disparities in standards of examination at the Master's level between different Universities and, as a result, local influence would be minimised and the eligibility zone for recruitment would become wider. The Mehrotra Committee recommended the following minimum qualifications for appointment to the post of Lecturer:

> "(*i*) Qualifying at the National Test conducted for the purpose by the UGC or any other agency approved by the UGC.
>
> (*ii*) Master's degree with at least fifty-five per cent marks or its equivalent grade and good academic record.
>
> The minimum qualifications mentioned above should not be relaxed even for candidates possessing M. Phil., Ph.D. qualification at the time of recruitment."

After examining the various recommendations contained in the report of the Mehrotra Committee and the recommendations made by the UGC, the Government of India prepared a scheme for revision of pay scales of teachers in the Universities and Colleges and other measures for maintenance of standards in higher education and, by letter dated 17-6-1987, the Government of India forwarded the said scheme to the Education Secretaries of all the States and Union Territories with a request to formulate detailed proposals for the implementation of the scheme on the lines indicated in the said letter. The said scheme was revised by the Central Government in 1988. The original scheme as well as the revised scheme required that only those candidates who, besides fulfilling the minimum academic qualifications prescribed for the post of Lecturer, have qualified in a comprehensive test, to be specially conducted for the purpose, will be eligible for appointment as Lecturers.

In 1989 a conference of Vice-Chancellors was held under the auspices of the UGC and one of the major recommendations made in the said conference was:

> "The national level test to determine the eligibility for lecturers be conducted. When the State Government conducts such tests, while accrediting them caution be exercised."

Keeping in view the said recommendations the UGC made the 1991 Regulations which were notified vide notification dated 19-9-1991. The 1991 Regulations superseded the 1982 Regulations and prescribed the following minimum qualifications for the post of lecturers in universities and colleges:

> "Good academic record with at least 55% marks or an equivalent

grade at Master's level in the relevant subject from an Indian University or an equivalent degree from a foreign University.

Candidates besides fulfilling the above qualifications should have cleared the eligibility test for lecturers conducted by UGC, CSIR or similar test accredited by the UGC."

By Circular dated 10-2-1993 the UGC granted exemption from appearing in the eligibility test to the following categories:

1. All candidates who have passed UGC/CSIR J.R.F. Examination.

2. All candidates who have already been awarded Ph.D. degree.

3. All candidates who have already been awarded M. Phil. degree up to 31-3-1991.

4. All candidates who will submit their Ph.D. thesis up to 31-12-1993.

By Circular dated 15-6-1993 in respect of candidates falling in category (3) exemption from appearing in the eligibility test was extended to candidates who had been awarded M. Phil. degree up to 31-12-1992. By a notification dated 21-6-1995, the 1991 Regulations have been amended and the following proviso has been added below the requirement regarding clearing the eligibility test for appointment on the post of Lecturer:

"Provided that candidates who have submitted Ph.D. thesis or passed the M. Phil. examination by 31-12-1993 are exempted from the eligibility test for lecturers conducted by UGC, CSIR or similar test accredited by the UGC."

Under Section 26(1)(e) of the University Grants Commission Act, the U.G.C. is empowered to make regulations prescribing the qualifications ordinarily required to be held by any person to be appointed as a teaching staff of the University having regard to the branch of education in which he is expected to give instructions. For appointment to a teaching post, in any institution including affiliated colleges, the 1991 UGC Regulations prescribed a good academic record with atleast 55% marks in post graduation. In addition, the candidate was required to clear the eligibility test for lecturers conducted by the U.G.C, CSIR or other similar tests accredited by the UGC. The 1991 regulations were amended, on 21.06.1995, exempting candidates, who had passed their M.Phil

examination prior to 31.12.1993, from the eligibility test of lecturers (NET/SLET).

In **University of Delhi v. Raj Singh**[2], the Supreme Court observed:-

".....The ambit of Entry 66 has already been the subject of the decisions of this Court in the cases of the *Gujarat University*[1] and the *Osmania University*[2]. The UGC Act is enacted under the provisions of Entry 66 to carry out the objective thereof. Its short title, in fact, reproduces the words of Entry 66. The principal function of the UGC is set out in the opening words of Section 12, thus:

> "It shall be the general duty of the Commission to take ... all such steps as it may think fit for the promotion and coordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities ...."

It is very important to note that a duty is cast upon the Commission to take "all such steps as it may think fit ... for the determination and maintenance of standards of teaching". These are very wide-ranging powers. Such powers, in our view, would comprehend the power to require those who possess the educational qualifications required for holding the post of lecturer in Universities and colleges to appear for a written test, the passing of which would establish that they possess the minimal proficiency for holding such post. The need for such test is demonstrated by the reports of the commissions and committees of educationists referred to above which take note of the disparities in the standards of education in the various Universities in the country. It is patent that the holder of a postgraduate degree from one University is not necessarily of the same standard as the holder of the same postgraduate degree from another University. That is the rationale of the test prescribed by the said Regulations. It falls squarely within the scope of Entry 66 and the UGC Act inasmuch as it is intended to co-ordinate standards and the UGC is armed with the power to take all such steps as it may think fit in this behalf. For performing its general duty and its other functions under the UGC Act, the UGC is invested with the powers specified in the various clauses of Section 12. These include the power to recommend to a University the measures necessary for the improvement of University education and to advise in respect of the action to be taken for the purpose of implementing such recommendation [clause (*d*)]. The UGC is also invested with the power to perform such other functions as may be prescribed or as may be deemed necessary by it for advancing the cause of higher education in India or as may be incidental or conducive to

the discharge of such functions [clause (*j*)]. These two clauses are also wide enough to empower the UGC to frame the said Regulations. By reason of Section 14, the UGC is authorised to withhold from a University its grant if the University fails within a reasonable time to comply with its recommendation, but it is required to do so only after taking into consideration the cause, if any, shown by the University for such failure. **Section 26 authorises the UGC to make regulations consistent with the UGC Act and the rules made thereunder, inter alia, defining the qualifications that should ordinarily be required for any person to be appointed to the teaching staff of a University, having regard to the branch of education in which he is expected to give instruction [clause (*e*) of sub-section (1)]; and regulating the maintenance of standards and the coordination of work or facilities in Universities [clause (*g*)]. We have no doubt that the word 'defining' means setting out precisely or specifically. The word 'qualifications', as used in clause (*e*), is of wide amplitude and would include the requirement of passing a basic eligibility test prescribed by the UGC.** The word 'qualifications' in clause (*e*) is certainly wider than the word 'qualification' defined in Section 12-A(1) (*d*), which in expressly stated terms is a definition that applies only to the provisions of Section 12-A. Were this definition of qualification, as meaning a degree or any other qualification awarded by a University, to have been intended to apply throughout the Act, it would have found place in the definition section, namely, Section 2.

We now turn to analyse the said Regulations. They are made applicable to a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, every institution, including a constituent or an affiliated college recognised by the UGC in consultation with the University concerned, and every institution deemed to be a University. The said Regulations are thus intended to have the widest possible application, as indeed they must have if they are to serve the purpose intended, namely, to ensure that all applicants for the post of lecturer, from whichever University they may have procured the minimum qualification degree, must establish that they possess the proficiency required for lecturers in all Universities in the country. This is what clause 2 of the said Regulations mandates, thus:

> "No person shall be appointed to a teaching post in University ... in a subject if he does not fulfil the requirements as to the qualifications for the appropriate subject as provided in Schedule 1."

The first proviso to clause 2 permits relaxation in the prescribed qualifications by a University provided it is made with the prior approval of the UGC. This is because the said Regulations, made under the provisions of Section 26(1)(*e*), define the qualifications that are ordinarily and not invariably required of a lecturer. The second proviso

to clause 2 makes the application of the said Regulations prospective. Clause 3 of the said Regulations provides for the consequence of the failure of a University to comply with the recommendation made in clause 2 in the same terms as are set out in Section 14 of the UGC Act. **The provisions of clause 2 of the said Regulations are, therefore, recommendatory in character. It would be open to a University to comply with the provisions of clause 2 by employing as lecturers only such persons as fulfil the requirements as to qualifications for the appropriate subject provided in the schedule to the said Regulations. It would also be open, in specific cases, for the University to seek the prior approval of the UGC to relax these requirements. Yet again, it would be open to the University not to comply with the provisions of clause 2, in which case, in the event that it failed to satisfy the UGC that it had done so for good cause, it would lose its grant from the UGC. The said Regulations do not impinge upon the power of the University to select its teachers. The University may still select its lecturers by written test and interview or either. Successful candidates at the basic eligibility test prescribed by the said Regulations are awarded no marks or ranks and, therefore, all who have cleared it stand at the same level. There is, therefore, no element of selection in the process. The University's autonomy is not entrenched upon by the said Regulations……." (emphasis supplied)**

The validity of the exemption granted, from the requirement of passing the NET/SLET to candidates who had obtained their M.Phil degree prior to 31.12.1993, was upheld in **Sadhana Chaudhary**[1], wherein the Supreme Court observed:

"……Prior to the making of the 1991 Regulations there was no statutory requirement regarding clearing the eligibility test for the purpose of appointment to the post of Lecturer. Such a requirement was introduced for the first time by the 1991 Regulations. At the time when the 1991Regulations were made the provisions contained in the 1982 Regulations had given rise to a legitimate expectation that a person having a Ph.D. or M.Phil. degree and having good academic record as prescribed under the 1982 Regulations would be eligible for appointment on the post of Lecturer without anything more. While the UGC did not intend to deprive the persons who had obtained M.Phil. degree or expectation in the matter of appointment on the post of Lecturer in universities or colleges. It was also felt that the said requirement in the 1991 Regulations should not operate to the prejudice of persons who, having regard to the qualifications prescribed in the 1982 Regulations, had registered for the Ph.D. degree or had joined study for M.Phil. degree course prior to making of the 1991Regulations and, therefore, provision was made for granting exemption to such candidates with the condition that they should have passed M.Phil. examination or should have

submitted Ph.D. thesis by a particular date. Insofar as the date of submission of the Ph.D. thesis is concerned, the said date, i.e., 31.12.1993, has remained unchanged in the Circulars dated 10.2.1993 and 15.6.1993 and the notification dated 21.6.1995. For M.Phil. degree the date was, however, changed from 31.3.1991 to 31.12.1992 by Circular dated 15.6.1993 and from 31.12.1992 to 31.12.1993 by notification dated 21.6.1995. **The amendment in the 1991 Regulations that has been made by the notification dated 21.6.1995, in substance, postpones the date of applicability of the requirement regarding clearing the eligibility test in the 1991 Regulations till 31.12.1993 in respect of candidates who had joined the M.Phil. course or registered for Ph.D. degree. Such candidates constitute a distinct class who could be treated separately insofar as the requirement of clearing the eligibility test was concerned. Such a classification of the candidates for the purpose of applicability of the requirement of clearing the eligibility test has a rational basis which has a reasonable nexus with the object sought to be achieved by the 1991 Regulations. We are, therefore, unable to hold that the exemption that has been granted by the amendment introduced in the 1991 Regulations by notification dated 21.6.1995 is violative of the right to equality guaranteed under Article 14 of the Constitution. …..” (emphasis supplied)**

The University Grants Commission has been entrusted the duty and responsibility of determining and coordinating standards of teaching in Universities. Proper standards of teaching can be achieved only if adequate infrastructural facilities, including a well equipped teaching staff of the required calibre, are provided for. To enable it to ensure maintenance of adequate standards, the UGC has been conferred the power to make regulations. In **Prof. Yashpal Vs. State of Chattisgarh**[3], the Supreme Court observed:

“.....Entry 66 which deals with coordination and determination of standard in institutions for higher education or research and scientific and technical institutions is in the Union List and Parliament alone has the legislative competence to legislate on the said topic. The University Grants Commission Act has been made with reference to Entry 66 (see *Prem Chand Jain* v. *R.K. Chhabra* (1984)2 SCC 302 and *Osmania University Teachers’ Assn.* v. *State of A.P.*: (1987(4 SCC 671). The Act has been

enacted to ensure that there is coordination and determination of standards in universities, which are institutions of higher learning, by a body created by the Central Government. It is the duty and responsibility of the University Grants Commission, which is established by Section 4 of the UGC Act, to determine and coordinate the standard of teaching curriculum and also level of examination in various universities in the country. In order to achieve the aforesaid objectives, the role of UGC comes at the threshold. The course of study, its nature and volume, has to be ascertained and determined before the commencement of academic session. Proper standard of teaching cannot be achieved unless there are adequate infrastructural facilities in the campus like classrooms, libraries, laboratories, well-equipped teaching staff of requisite calibre and a proper student-teacher ratio. For this purpose, the Central Government has made a number of rules in exercise of powers conferred by Section 25 of the UGC Act and the Commission has also made regulations in exercise of power conferred by Section 26 of the UGC Act and to mention a few, the UGC Inspection of Universities Rules, 1960, the UGC Regulations, 1985 Regarding the Minimum Standards of Instructions for the Grant of the First Degree, UGC Regulations, 1991 Regarding Minimum Qualifications for Appointment of Teachers in Universities and Colleges, etc….."

The prescription of passing the tests accredited by UGC is a statutory requirement under the 1991 UGC regulations as amended on 21.06.1995. As noted above, the University Grants Commission has been conferred the power to determine and coordinate standards of teaching in various Universities throughout the country. To achieve the objective of maintaining high standards of teaching, it is essential to have a well-equipped teaching staff of the requisite calibre. It is in this regard that UGC has, under its Regulations, prescribed passing of the accredited test as an essential qualification for being appointed as lecturers in University/degree colleges. However, taking into consideration the fact that when the 1991 regulations were made, the provisions contained in the earlier 1982 regulations had given rise to a legitimate expectation that the person having an M.Phil degree with good academic record, as prescribed under the 1982 regulations, would be eligible for appointment to the post of

lecturer, the University Grants Commission exempted those candidates, who had obtained their M.Phil degree prior to 31.12.1993, from passing the test accredited by the UGC. In effect, candidates who had obtained their M.Phil degree, prior to 31.12.1993, are equated to those who had passed NET/SLET.

The executive instructions of the government, in G.O.Rt. No. 1559 dated 07.11.1997, is in accordance with the 1991 U.G.C. regulations as amended on 21.06.1995. The government has, in its wisdom, chosen to prescribe this qualification, of passing the NET/SLET, amongst the eligibility criteria for appointment as a lecturer in degree colleges. The qualification of passing NET/SLET, as prescribed in notification issued by the 3rd respondent college on 10.06.2001, in accordance with the instructions issued by the government in G.O.Rt. No. 1599 dated 07.11.1997 and the UGC 1991 regulations, can neither be said to be illegal nor as inapplicable in filling up of backlog vacancies. Since compliance with both the qualifications, prescribed in the notification dated 10.06.2001, is essential, we are not persuaded to accept the submission of Sri P. Venugopal, learned Counsel for the respondent-writ petitioner, that the requirement of passing NET/SLET is only for payment of UGC scales of pay and that the petitioner, having obtained higher marks in the post graduate examination, should be appointed as a lecturer in the State scales of pay, even if she has not passed the NET/SLET.

On a reading of the notification, as a whole, it is clear that, where a candidate who fulfils both the qualifications is available for selection, he or she is required to be considered for appointment as a lecturer and on being selected should be paid the UGC scales

of pay. It is only in cases where no candidate, who possesses both the prescribed qualifications including the requirement of having passed the NET/SLET, is available should candidates, who possess the qualification of a post graduate degree, with 1st or 2nd class with a minimum of 50% marks, be considered for appointment as a lecturer in which event the selected candidate, not having passed the NET/SLET, would only be entitled to be paid the State scales of pay. We are not persuaded to accept the submission that a candidate, who possesses the higher qualification of an M.Phil degree, should be ignored and instead a candidate with the lesser qualification of a postgraduate degree should be preferred, merely on the basis of the marks in the post graduation examination. While it is true that the posts sought to be filled up are backlog vacancies, reserved in favour of candidates from the S.C. and S.T. categories, and relaxation of educational qualifications would be justified to ensure that all such available vacancies are filled up, it does not stand to reason that, when an S.C. candidate, with both the prescribed qualifications, is available for selection his candidature should be ignored and an S.C. candidate, who possesses only one of the two prescribed qualifications, should be preferred.

Even if the instructions of the Director of Collegiate education dated 25.09.2001 were to be ignored, when the notification issued by the 3rd respondent is read as a whole, along with the instructions of the government in G.O.Rt.No. 1599 dated 07.11.1997, (which is in accordance with the UGC 1991 regulations as amended with effect from 21.06.1995), we are satisfied that the 2nd respondent-Director of Collegiate education

was justified in issuing proceedings dated 10.01.2002 directing the 3rd respondent-college to appoint the appellant as a lecturer in Zoology, in the Scheduled Caste backlog vacancy in the UGC scale of pay of Rs.8,000/-13,500/-.

The order in W.P. Nos. 22242 of 2001 and 3300 of 2002 dated 24.06.2005 are set aside. The 3rd respondent college shall, in compliance with the proceedings of the 1st respondent dated 10.01.2002, appoint the appellant, as a lecturer in Zoology, forthwith.

The writ appeal is accordingly allowed. However, in the circumstances, without costs.

_____

B.PRAKASH RAO, J

Date: .09.2006

_____

RAMESH RANGANATHAN, J

Note: L.R. copy to be marked
B/o
MRKR

---

[1] 1996 SCC (L&S) 1431

[2] 1994 Supp (3) SCC 516

[3] 2005(5) SCC 420